

**REMARKS**

Favorable reconsideration of this application is respectfully requested in view of the claim amendments and following remarks. Claims 1, 3, 7, 12, 14, and 18 have been amended. Currently, claims 1-22 are pending in the present application of which claims 1, 3, 7, 12, 14, and 18 are independent. No new matter has been added.

Claims 1-22 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Chen et al. (U.S. Patent Number 5,923,650) in view of Criss et al. (U.S. Patent Publication Number 2001/0029178). The above rejections are respectfully traversed for at least the reasons set forth below.

**Claim Rejection Under 35 U.S.C. §103**

The test for determining if a claim is rendered obvious by one or more references for purposes of a rejection under 35 U.S.C. § 103 is set forth in MPEP § 706.02(j):

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Therefore, if the above-identified criteria are not met, then the cited reference(s) fails to render obvious the claimed invention and, thus, the claimed invention is distinguishable over the cited reference(s).

Claims 1-22 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Chen et al. in view of Criss et al. This rejection is respectfully traversed because Chen et al. and Criss et al., considered singly or in combination, fail to teach or suggest the claimed invention as set forth in amended claims 1, 3, 7, 12, 14, and 18 and their dependents.

Generally, the Chen reference appears to only teach or suggest a transmission schedule for assigning a maximum scheduled transmission rate to remote stations (e.g., subscriber stations). Furthermore, the formation of such a maximum transmission rate schedule in the Chen reference appears to be developed based upon a present request from a remote station (e.g., subscriber station) for an immediate allocation of channel capacity based upon a present need which is in distinct contrast to Applicants' invention element of a schedule "based on a forthcoming event" as presently claimed.

Specifically, the Chen reference teaches or suggests:

The schedule of the maximum scheduled transmissions rate is only transmitted to remote stations 6 which has been assigned or reassigned a transmission rate. (Chen, col. 14, lines 57-59; emphasis added)

... the reverse link rate scheduling of the present invention can be staggered. In this embodiment, the scheduling can be triggered by certain events. For example, channel schedule 12 can perform the reverse link rate scheduling whenever a request for high speed data transmission is received or whenever a scheduled high speed data transmission by remote station 6 is completed. (Chen, col. 14, lines 40-47; emphasis added).

Clearly the Chen reference teaches or suggests a schedule including the maximum scheduled transmission rate. Furthermore, the Chen reference teaches or suggests scheduling based upon present needs/ requests or past/completed events, namely, "scheduling can be triggered by ... a request for high speed data transmission ... or whenever a ... transmission ... is completed."

Claim 1, 3, 7, 12, 14, and 18, as amended, recite in some manner determining or ascertaining a transmission schedule transmission schedule to transmit the data is based on a forthcoming event of at least one subscriber station due for a transmission of the data, before the

subscriber station sends a request for transmission. The applicants have amended these claims to clarify that the schedule performs the scheduling based upon information to be transmitted from the subscriber station before the subscriber station sends a request for transmission. This is not shown by either Chen et al. or Criss et al. The office action seems to allege that Chen et al. discloses this by pointing to column 8 Lines 51-60 which refers to scheduled and unscheduled transmissions. However, this paragraph refers to classes of data that can tolerate delays as opposed to classes of data that cannot tolerate delays. For example, internet data transmission may be delay tolerant and subject to scheduling whereas voice data may not be delay tolerant and must be transmitted as soon as possible. In this regard, Chen et al. merely discusses the scheduling of information that is delay tolerant after the subscriber station sends a request for transmission. Therefore, Chen et al. fails to teach or suggest the scheduling of transmissions before the subscriber station sends a request for transmission. Criss et al. fails to make up for this deficiency as it is directed to a software upgrading scheme that is not related to data transmission scheduling at this level.

At least by virtue of Chen et al.'s and Criss et al.'s failure to teach or suggest the above identified element of claims 1, 3, 7, 12, 14, and 18, a *prima facie* case of obviousness cannot be established under 35 U.S.C. § 103. Accordingly, the Examiner is respectfully requested to withdraw the rejection of claim 1, 3, 7, 12, 14, and 18 and the claims that depend therefore as they are also allowable over Chen et al. in view of Criss et al. at least by virtue of their dependencies.

Conclusion

In light of the foregoing, withdrawal of the rejections of record and allowance of this application are earnestly solicited.

While we believe that the instant amendment places the application in condition for allowance, should the Examiner have any further comments or suggestions, it is respectfully requested that the Examiner telephone the undersigned attorney in order to expeditiously resolve any outstanding issues.

In the event that the fees submitted prove to be insufficient in connection with the filing of this paper, please charge our Deposit Account Number 17-0026 and please credit any excess fees to such Deposit Account.

Respectfully submitted,

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